

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

**ATTORNEY GENERAL OF THE
STATE OF OKLAHOMA, et al,**

Case Number: 4:05-C V-00329-TCK-SAJ

PLAINTIFFS,

v.

TYSON FOODS, INC., et al,

DEFENDANTS,

TYSON FOODS, INC., et al,

THIRD-PARTY PLAINTIFFS,

v.

CITY OF TALEQUAH, et al,

THIRD-PARTY DEFENDANTS.

**ANSWER OF BILL STEWART, D/B/A DUTCHMAN’S CABINS
TO THIRD PARTY COMPLAINT**

Third-Party Defendant, Bill Stewart, individually and d/b/a Dutchman’s Cabins (“Stewart”) hereby responds as follows to the allegations set forth in the Third-Party Complaint:

1. Third Party Defendant, Bill Stewart, individually and d/b/a Dutchman’s Cabins (hereinafter “Stewart”) is without sufficient knowledge or information to form a belief as to the allegations set forth in paragraphs 1-74 of the Third Party Complaint and therefore deny all such allegations.

2. With respect to paragraph 75 Stewart admits that he owns property located near the IRW and operates a business known as Dutchman’s Cabins. This business includes, inter alia, operations of rental cabins and a mobile home park. Stewart denies all remaining allegations set forth in paragraph 75.

3. Stewart is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 76-199 of the Third Party Complaint and therefore deny all such allegations.

4. Paragraphs 200 -221 are denied to the extent that they relate to Stewart.

AFFIRMATIVE DEFENSES

In addition to the Answer to the allegations set forth above, Stewart asserts the following affirmative defenses which bar some or all of the Third Party Plaintiffs' claims:

1. The Third-Party Complaint fails to state claims upon which relief can be granted.
2. Any alleged damages were caused in whole or in part by Third Party Plaintiffs own negligence.
3. Any alleged damages were caused in whole or in part by other, unnamed persons or entities.
4. Third Party Plaintiffs' Complaint is incomplete and omits major parties both in Arkansas and Oklahoma within the Illinois River Watershed (IRW).
5. Stewart has operated his facilities in accordance with all competent authority.
6. Third Party Plaintiff's claims are barred pursuant to the doctrines of waiver, contributory negligence, assumption of risk, lack of standing, and lack of causation.
7. Third Party Plaintiffs' Complaint should be dismissed for failure to join one or more necessary, proper and indispensable parties.
8. Third Party Plaintiffs' claims are barred to the extent they rely on the retroactive application of any statute, regulation or standard of conduct.

9. Third Party Plaintiffs' claims are barred to the extent they are predicated upon conditions located on private lands, within privately owned waters, on federal lands or any condition located within Indian Country.

10. The Third Party Complaint should be dismissed due to Third Party Plaintiffs' failure to identify and describe any specific lands they assert is a "facility" within the meaning of CERCLA.

11. Third Party Plaintiffs' knowledge of the alleged conditions in the IRW has continued for such a period of time as to eliminate the existence of any "imminent and substantial endangerment" as a matter of law.

12. Third Party Plaintiffs' Complaint should be dismissed due to the inadequacy of notice under 42 U.S.C. §6901 *et seq.* and 42 U.S.C. § 9601 *et. seq.*

13. Third Party Plaintiffs' Complaint should be dismissed due to the inability to prove that any natural resource damage was caused by any release or discharge of a hazardous substance for which Stewart could be held liable.

14. The Third Party Complaint should be dismissed, in whole or in part, due to the inability to prove the existence of a release, threatened release, or natural resource damage resulting from each and every one of the constituents about which they complain.

15. The Third Party Complaint should be dismissed due to the inability to prove that the claimed release of any substance by Stewart would have caused the alleged natural resource damages apart from the alleged operations of the Third Party Plaintiffs.

16. Third Party Plaintiffs have failed to allege that they have performed any duty that was the duty of Stewart to perform, and thus are not entitled to equitable relief pursuant to an unjust enrichment claim.

17. This Court lacks personal and subject matter jurisdiction, and venue does not lie in

the Northern District of Oklahoma, as most of the Illinois Watershed is in the Eastern District of Oklahoma.

18. Third Party Plaintiffs' claims are barred, in whole or in part, due to failure to exhaust administrative remedies.

19. Third Party Plaintiffs' claims are barred, in whole or in part, due to Third Party Plaintiffs' failure to identify any specific act, omission or release on the part of Stewart for which Plaintiffs seek to hold Stewart liable.

20. Third Party Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitation, statutes of repose and the equitable doctrine of laches.

21. Plaintiffs' claims are barred under the doctrines of estoppel, waiver and consent.

22. Third Party Plaintiffs' claims are barred until such time as Total Maximum Daily Loads have been established for each constituent alleged, and for each water body alleged, as required by the federal Clean Water Act.

23. The Third Party Complaint fails to state any facts to support any claim that any act or omission of Stewart directly and proximately resulted in any injury for which Plaintiffs can recover.

24. While continuing to deny the material allegations of the Complaint, Stewart states that Third Party Plaintiffs' claims are barred, in whole or in part, by their own conduct that contributed to the injuries they claim.

25. Stewart states that Third Party Plaintiffs' claims are barred, in whole or in part, by their unclean hands and the doctrine of *in pan delicto*.

26. Third Party Plaintiffs' injuries, if any, are the result of intervening and/or superseding causes.

27. Stewart states that Third Party Plaintiffs' claims are barred, in whole or in part, by their failure to mitigate their alleged damages.

28. The damages of which Third Party Plaintiffs complain, if any, are the result of acts or omissions of individuals or entities over which Stewart has or had no control and for which Stewart has no responsibility.

29. Third Party Plaintiffs' claims should be dismissed by virtue of Third Party Plaintiffs' conduct, which results and resulted in the release of most, if not all, of the constituents alleged against Stewart.

30. Third Party Plaintiffs cannot state a claim against Stewart as Stewart does not have any discharge to the IRW.

31. Third Party Plaintiffs do not have a right of contribution for intentional torts.

32. Third Party Plaintiffs' claim for indemnity will not lie, as there is no express or implied contractual relationship or any other legal relationship with Stewart which gives rise to an indemnity claim.

33. Third Party Plaintiffs' Complaint should be dismissed, in whole or in part, due to Third Party Plaintiffs' attempt to recover multiple remedies for the same alleged injury.

34. Third Party Plaintiffs' claim for attorney's fees should be dismissed, as damages awarded for natural resource injuries cannot be utilized for the payment of attorney's fees.

35. Third Party Plaintiffs' claim for pre-judgment interest should be dismissed for failure to state a claim upon which relief can be granted, because the amount of damages, if any, was not readily ascertainable at the time Third Party Plaintiffs' lawsuit was commenced.

36. Stewart asserts that any award of punitive damages against Stewart would be unconstitutional as violative of the Double Jeopardy Clause of the Fifth Amendment, U.S. Const.

Amend. V, the Excessive Fines Clause of the Eighth Amendment, U.S. Const. Amend. VIII, the Due Process Clause of the Fourteenth Amendment, U.S. Const. Amend. XIV, and the Constitutions of the States of Oklahoma and Arkansas.

37. Third Party Plaintiffs do not have a right of contribution for actions not arising in tort.

38. Third Party Plaintiffs' claims are barred, in whole or in part, by 42 U.S.C.A. § 6972(b)(2)(C).

39. Third Party Plaintiffs do not have a right of contribution or indemnity under the Solid Waste Disposal Act or the Resource Conservation and Recovery Act.

40. The Third Party Complaint should be dismissed, in whole or in part, because Stewart does not fall within the definitional meaning proscribed by 20 S. § 20-3(B)(2).

41. Stewart hereby adopts and incorporates by reference any other statement of defense asserted by any other Defendant in this action.

42. The Third Party Complaint should be dismissed, in whole or in part, because the Oklahoma Concentrated Animal Feeding Operations Act does not give rise to a private cause of action.

43. Stewart reserves the right to Amend its Answer and Affirmative Defenses as discovery progresses to assert additional defenses, cross-claims, counterclaims and third-party claims.

WHEREFORE, Stewart requests that all claims against him be dismissed with prejudice; that Third Party Plaintiffs be required to reimburse him for all fees and costs in responding to this Third Party Complaint; and for all other relief that the Court deems just and proper.

Respectfully submitted this 11th day of May, 2006.

s/ R. Pope Van Cleef, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of April 2006, I electronically transmitted the foregoing Motion for Extension of Time to Answer Third-Party Complaint to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Jo Nan Allen
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Cohn Hampton Tucker
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David Alden Walls
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Timothy K. Webster
Gary V. Weeks
Adam Scott Weintraub
Terry Wayen West
Dale Kenyon Williams, Jr.
Edwin Stephen Williams
Douglas Allen Wilson
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I hereby certify that on the 11th day of May, 2006, I served the same document by U.S. Postal Service on the following who are not registered participants of the ECF System:

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